

In the Matter of Shantha Shashidhara
Department of Environmental Protection
DOP Docket No. 2006-1253
(Merit System Board, decided July 19, 2006)

Shantha Shashidhara, a Research Scientist 2 with the Department of Environmental Protection (DEP), represented by Adam Liebttag, CWA Local 1034, appeals the determination to place her on step eight of salary range P28, rather than step nine, upon her appointment from the special reemployment list for Research Scientist 2.

By way of background, the appellant was demoted in lieu of layoff from the title of Research Scientist 2 to the title of Research Scientist 3, effective July 6, 1996. Prior to her demotion in lieu of layoff, the appellant was on step eight of salary range P28. After her demotion, she was placed on step nine of salary range P25. Upon her March 5, 2005 appointment from the special reemployment list for Research Scientist 2, the appellant was placed on step eight of salary range P28.

On appeal, the appellant argues that she should have been placed on step nine of salary range P28 upon her appointment from the special reemployment list because she had been serving on step nine of salary range P25 since her demotion in lieu of layoff in 1996. The appellant maintains that she was told she was placed on step eight of salary range P28 because she had not yet completed 18 months in step eight which is required in order to be moved to step nine. However, the appellant asserts that since 1996, she had been at step nine of salary range P25, for a total of seven years and nine months.

Additionally, the appellant contends that she should have been placed on step nine of salary range P28 for equitable reasons. Specifically, she claims that since she suffered a reduction in force in 1996, and therefore a commensurate loss of pay during that time period, then she should be placed on step nine to ameliorate that loss. Furthermore, she asserts that by failing to place her on step nine of salary range P28, she will miss the step 10 increase that took place on July 1, 2006. Instead, by placing her on step eight of salary range P28, she is not eligible for the step nine increase until February 2006 and the step 10 increase until February 2008. Therefore, she argues that she should have been placed on step nine in order to restore her career to what it would have been except for the reduction in force. Specifically, "but for the layoff," the appellant would have been placed at step nine of salary range P28 by March 2005, and therefore, she would have

served the required 24 months prior to July 1, 2006 and she would have been eligible for the step 10 increase.

In response, the appointing authority maintains that the Department of Personnel (DOP) PMIS Unit placed the appellant on step eight of salary range P28, pursuant to *N.J.A.C. 4A:3-4.5(a)3* which provides that an employee is only eligible for advancement to the ninth step upon completion of the 39th pay period at step eight. In this regard, it notes that prior to the appellant's demotion in lieu of a layoff, the appellant was on step eight of salary range P28 and she had completed 14 pay periods at step eight. Therefore, upon her appointment from the special reemployment list, the appellant was given "credit" for those 14 pay periods at step eight. Consequently, the appellant was eligible for advancement to step nine on pay period 4/06, which was the first pay period in February 2006. The appointing authority asserts that it does not object to the placement of the appellant on step nine of salary range P28, effective March 5, 2005. In this regard, it notes that the appellant had served on step nine of salary range P25 and had completed 14 of the required 39 pay periods prior to her demotion.

It is noted that the Salary Schedule in effect at the time of the appellant's demotion was, in part, as follows:

	RANGE P25	RANGE P28
INCREMENT	1,917.53	2,219.52
STEP EIGHT	51,750.71	59,909.14
STEP NINE	53,668.24	62,128.66

The Salary Schedule in effect at the time of the appellant's appointment from the special reemployment list was, in part, as follows:

	RANGE P25	RANGE P28
INCREMENT	2,274.94	2,633.21
STEP SIX	59,961.13	68,923.65
STEP SEVEN	62,236.07	71,556.86
STEP EIGHT	64,511.01	74,190.07
STEP NINE	66,785.95	76,823.28

CONCLUSION

In the instant matter, the appellant argues that she should have been placed on step nine of salary range P28 upon her appointment from the special reemployment list due to equitable considerations since she had

already served 39 pay periods at step nine of salary range P25. However, *N.J.A.C.* 4A:3-4.17(a) provides that:

The salary of an employee appointed from a special reemployment list shall be determined as follows:

1. When appointed to the same title held at the time of the reduction in force, the employee shall receive the same step of the salary range received on the date of the layoff or the salary determined in accordance with (a)2 below, whichever is the most beneficial to the employee.
2. When appointed to a different title from the one held at the time of the reduction in force, the employee shall receive the most beneficial to the employee of the following:
 - i. The same step and salary range that he or she would have received if appointed to the new title on the date of the reduction in force; or
 - ii. When the employee is currently serving in another title, the salary determined by adjustment to the new title . . .
 - (2) When appointed to a new title with a higher class code, make an advancement pay adjustment, *N.J.A.C.* 4A:3-4.9¹. If the

¹ In this regard, *N.J.A.C.* 4A:3-4.9(a) provides that:

Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range . . . This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;
2. Employees are serving in a title which is reevaluated to a higher class code; or
3. Employees are appointed to a title with a higher class code, when the conditions in (a)1 or 2 above are not applicable, provided the Department of Personnel finds the following criteria are met:

employee has attained a higher salary in a lower title than the current value of the step he or she would have received in the new title on the date of the layoff, the salary shall be set at the step that is next higher than the salary in the lower title. The anniversary date will be set based on the effective date of the action . . .

Therefore, pursuant to *N.J.A.C.* 4A:3-4.17(a) and *N.J.A.C.* 4A:3-4.9, the appellant was correctly placed on step eight of salary range P28. Specifically, *N.J.A.C.* 4A:3-4.17(a)1 provides that an employee shall receive whichever is more beneficial, either the same step he or she was on at the time of the reduction in force, or a salary adjustment as determined by *N.J.A.C.* 4A:3-4.9. In this instant matter, placing the appellant on the same step she was at on the date of the reduction in force would provide her with a more beneficial result. In this regard, it is noted that the appellant was on step eight of salary range P28 at the time of the reduction in force, therefore, she would be placed back on step eight pursuant to the first part of *N.J.A.C.* 4A:3-4.17(a)1. However, if her salary was calculated utilizing *N.J.A.C.* 4A:3-4.9(a), she would only be entitled to a salary increase equal to at least one increment in salary range P25 plus the amount necessary to place her on the next higher step in salary range P28. At the time of her appointment from the special reemployment list the appellant was at step nine of salary range P25 (\$66,785.95) and an increment for salary range P25 was \$2,274.94. Therefore, she would be placed on step seven of salary range P28 ($\$66,785.95 + \$2,274.94 = \$69,060.89$ - which is between step six and step seven of salary range P28). Therefore, the appellant was correctly placed on step eight of salary range P28, since that was the most beneficial to her.

Finally, although the appellant asserts that she should have been placed on step nine for equitable reasons, she has failed to present any evidence to show good cause to relax *N.J.A.C.* 4A:3-4.17. In this regard, the record does not reveal that the appellant's appointment from the special reemployment list was improperly delayed or that the appointing authority treated her differently than others who have been appointed from a special reemployment list. Consequently, there is no reason to relax *N.J.A.C.* 4A:3-4.17.

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- i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and
 - ii. The service in the lower title provided significant preparation and training for service in the higher title.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.